

ADDITIONAL DOCUMENTS

IN

THE CLAIM OF M. X. HARMONY.

JANUARY 5, 1849.

Submitted and ordered to be printed, to accompany bill S. No. 272.

Additional papers relating to the claim of Manuel X. Harmony, for losses sustained in the seizure of his property for the public service, by order of Colonel Doniphan, during the march of the United States forces on Chihuahua, in the year 1846, reported on at the last session.

1. Letter of Colonel Doniphan, showing that the seizure of said property was by his order, and that the object of the seizure was the protection and advantage of the army.
2. Authentic copy of the proceedings of the government of Chihuahua, in the seizure and confiscation of said goods as property of the United States. [Original on the file of the Senate.]
3. Translation of the above.
4. Deposition of Captain John W. Reed.
5. Certificate of Lieut. Andrew J. Dorn.

Letter of Colonel Doniphan.

NEW YORK, June 22, 1848.

SIR: In answer to your letter received a few days since, I can answer your inquiries cheerfully, as I am always willing for my conduct to be fully known, and the motives which impel me. If my course has been injurious to you, I can but regret it. My whole conduct towards you and the other traders proceeded from no personal feeling of dislike; indeed, my feelings to all the traders were kind, and my anxiety was that all might succeed well. I advised this enterprise, and wished it rewarded; but my object was to protect the army first, and I made everything else secondary, at most. First, I did give Colonel Mitchell the order, as he has stated. In your compliance with the order, you protested against it, and told me you would look to the government for such losses as you might sustain. I gave the order for the reasons assigned by Colonel Mitchell, and from the fact that most of the traders urged it, and assigned as a reason that they believed that you were unfriendly to us, and that you were anxious for the success of the Mexicans. In answer to your second question, as to your conduct and general deportment, I feel it my duty

to you in candor to state, that I never saw any thing unfriendly on your part; on the contrary, you assisted in making purchases, advancing money, and often in interpreting, without being willing to receive any remuneration. I again repeat, that, after mature deliberation, I cannot think that my conduct can be justly censured by either the traders or the government. I was placed in a most delicate situation, with very heavy responsibilities to the government, to my troops, to my State, to myself, and to the traders.

I have the honor to be yours,
A. W. DONIPHAN.

M. X. HARMONY.

Translation of an authentic copy of the proceedings of the government of Chihuahua.

FOURTH SEAL,
Years 1846

[L. S.]

ONE RUEL.
and 1847.

I, the citizen José Felix Zubia, notary public, do certify that Don José Maria de Uria Nafarrondo, vice consul of her Catholic Majesty the Queen of Spain, has presented to me a written document, requesting me to give him an exemplified copy of the contents thereof, which are literally as follows, viz :

OFFICE OF THE SECRETARY OF THE BUREAU OF THE GOVERNMENT OF CHIHUAHUA.

His excellency the governor has been informed that there is stored in the house under your charge a cargo which belonged to Don Manuel Harmony, who introduced the same into this city in the caravan of goods which came in company of the North American forces that invaded this city. His excellency knows also that said cargo was left in that house, *for account of the commander of the aforesaid forces*, to whom said Harmony delivered the same, with the object of claiming the value thereof from the government of the United States; and as in this case the law of nations authorizes this government to take possession of the aforesaid cargo, his excellency aforesaid, the vice-governor, directs this note to be addressed to you, requesting you to be pleased to deliver said cargo to such persons as the said government may designate; such delivery to be made according to the invoice under which it must have been deposited; and for which purpose the government expects that you will be pleased to transmit them said invoice, and other documents relating to said deposite, before the time when the delivery is to be made.

I have the honor to assure you of my distinguished consideration. God and liberty! Chihuahua, May 27, 1847.

JOSE RODRIGO GARCIA,
Secretary pro tem.

TO DON JOSE MARIA DE URIA Y NAFARRONDO.

In order to explain the matter of which the official note of your excellency, dated the 27th instant, treats, I must respectfully inform your excellency, in order that you may communicate the same to his excellency the governor of the State, that, in consequence of an order issued by

Colonel Jackson, Don Manuel X. Harmony was compelled, like several other citizens of Chihuahua, to quit precipitately the shop and store where he had his merchandise; and as at that time the occupation of this place by the Mexican troops was probable, and my countryman Harmony was not able to find a secure place for storing his effects, he requested that they should be placed for the moment in this my house. I consented to accept the deposite, under the express condition of not being responsible for any loss which might happen in any case to said effects, and that at all times and in any event my person and property should be exempt from all claims, observing in this respect the same conduct as at the time of the entrance into this city of the North American troops—I mean to refer to the jewels, &c., belonging to some Mexicans, which I willingly received into my house. Subsequently the body of North American forces that garrisoned this city having been disbanded, I unexpectedly received a letter from Don Manuel X. Harmony, a literal copy of which (I can produce the original for greater certainty) is as follows:

“CHIHUAHUA, April 27, 1847.

“MY DEAR SIR AND FRIEND: From this date you will please keep subject to the orders and disposal of Colonel A. W. Doniphan, commander-in-chief of the American forces in this place, all the goods which I have placed under your care, for which will be much obliged,

“Your obedient servant,

“M. X. HARMONY.

“DON JOSE MARIA DE URLA NAFARRONDO,

“Chihuahua.”

Permit me to call your attention to the fact, that by the foregoing letter Harmony directs me explicitly “to keep, subject to the orders and disposal of Colonel A. W. Doniphan, commander-in-chief of the American forces, all the goods belonging to him placed under my care;” but he does not direct me to keep them subject to the disposal of the government of the United States, nor does it appear that the colonel accepted these goods; but assuming that he had, it should be kept in mind that Mr. Doniphan is the person who respected with evident marks of esteem and politeness my consular house, all the Mexican families who took refuge in it, with whatever they had most precious; and further, that he did not seize the tobacco, arms, papers, &c., which he knew were in my aforesaid house, notwithstanding, said he, that they were the property of the Mexican government.

Let it be observed, moreover, that Don Manuel does not say that he abandons these goods (as your excellency supposes) “with the object of claiming their value from the government of the United States;” and your excellency will finally observe that the aforesaid letter does not state that any delivery was made to me of invoices or of other documents relative to this deposite, which, in my judgment, must be sacred until the ownership thereof be fully established. What I have stated with plain frankness should be taken into account, in order that his excellency the governor, respecting the laws of nations and observing a noble reciprocity, may resolve, with his accustomed justice, whatever shall be most consonant to reason, and to avoid further claims of great importance.

I take the liberty of presenting to your excellency assurances of my

particular regard, praying God to preserve your life many years. Chihuahua, May 28, 1847.

JOSE MARIA DE URIA Y NAFARRONDO.

To DON JOSE RODRIGO GARCIA,

Secretary pro tem. of the sovereign government

of the State of Chihuahua.

OFFICE OF THE SECRETARY OF THE BUREAU OF THE GOVERNMENT OF CHIHUAHUA.

His excellency the vice governor, having charge of the supreme executive power, has informed himself of the answer which you were pleased to give to my note of the 27th instant; in consequence whereof, his excellency orders me to say to you, that when he directed my aforesaid note to be addressed to you, he had the requisite knowledge that Don Manuel X. Harmony abandoned his merchandise, placing it at the disposal of Colonel Don Alexandro Doniphan, with the object of claiming the value thereof from the government of the United States; that from the fact that he did not state this to you in his letter, (which you have been pleased to copy,) nothing can be inferred against what this department has advanced; that the considerations which said Doniphan may have observed towards you, do not deprive the government of the rights which it possesses and are recognised by the common opinion of all public writers; that the generosity with which you acted in admitting into your dwelling-house, when this city was occupied by our unjust invaders, many Mexican families who took refuge in said house, and the property of some others who went to deposit them, although it entitles you to the gratitude of the parties interested, and even to that of the government, does not confer any rights to the United States, to Colonel Doniphan, nor to Don Manuel X. Harmony, to continue to own property which has been introduced in opposition to the laws of the country, which has been abandoned by the last named person, which is subject to the orders of the second, and which belongs at present to the government which wages against us the most unjust war ever witnessed in the century (so called) of civilization and enlightenment. His excellency the vice governor, supposing then that the delivery which Mr. Harmony made to you of his effects, before placing them subject to the orders and disposal of Colonel A. W. Doniphan, commander in chief of the North American forces, was without invoice or any other document, expects that you will transmit to him a note of the quantity or value of said effects, in order that thereupon his excellency may take such measures as he may judge necessary; his excellency believing that the observations which you have deemed proper to make to him, through me, cannot in the least prevent nor suspend further measures. Accepting the kind offers with which you distinguish me, I take pleasure in reciprocating the same sentiments to you, with an expression of my gratitude.

God and Liberty.—Chihuahua, May 29, 1847.

JOSE RODRIGO GARCIA,

Secretary pro tem.

To DON JOSE MARIA DE URIA NAFARRONDO.

CHIHUAHUA, May 31, 1847.

Desiring that the business which occupies us should come to a just and prompt settlement, I proceed to answer the note of your excellency of the 29th instant, adding to what I had the honor of communicating to you last—without having recourse to foreign declarations, subject for the most part to different interpretations—that there is this circumstance intervening in the case of this deposite, the only one of its kind, viz: that it is *in my own house*; and I cannot divine the reason of the equivocal expressions used by your excellency, when you designate my house as the *house under my charge, the house of my residence*. This house is, moreover, that of the vice consulate of Spain in Chihuahua; and your excellency will observe, in order to prevent an unfavorable interpretation, that when I stated in my former note that my house and all it contained had been respected by the commander of the North American forces with evident marks of esteem, I stated it in order to show the respect which was paid, not precisely to my person, but to the Spanish flag, according to the usage of civilized nations; and in relation to the gratitude of individuals, and even of the supreme government towards my person, for the insignificant services which I rendered to them. The praises which your excellency has been pleased to direct to me, I neither deserve nor seek, because as an old Spaniard I regard much the saying “do good,” &c. I am well aware that my individual conduct in these trying circumstances does not give to, nor take away any rights from, the United States, Colonel Doniphan, or Don Manuel X. Harmony. I do not pretend to defend the rights of the first and second parties, it not being within my duties as consul, particularly when that power is in open war with the republic of Mexico; but it is my duty to protect, under the Spanish flag, the person and property of the Spanish citizen, Don Manuel X. Harmony, who, as the subject of a neutral power having intimate relations with Mexico, has introduced his merchandise into the State of Chihuahua, under the supreme authority of the same, under the decree issued in the city of Hidalgo, of the 2d of April last, permitting merchandise freely to circulate in said State and to be sold. In relation to the abandonment of the effects which his excellency the Governor pretends has been made by Harmony, you will inform his excellency that when I communicated to Colonel Doniphan, in writing and verbally, that these effects were subject to his disposal by order of said Harmony, the commander of the North American forces did not deign to forward me any kind of answer, which is the same as if he refused to accept the goods. If any persons have incautiously declared that said Don Manuel made a complete abandonment of his merchandise for the purpose of claiming the value thereof from the government of the United States, how can those persons assert that he did actually make such abandonment? and if the claim were made and rejected, what course is then to be adopted? I again request your excellency that my former remarks be taken into consideration, and without taking upon myself to say to whom the merchandise really belongs, as it does not concern me, nor persons who have not the least interest direct or indirect in this business, I insist in asking your excellency respectfully, although a mere depositary, that on account of the great importance of this business by reason of the claims to which it must necessarily give rise in future, and of its various and important ramifications, (which cannot escape the

penetration of your excellency,) the matter should be consulted for the more correct decision thereof, for the reasons above stated. I repeat, Mr. Secretary, that I have not received invoices or any other kind of document relative to the merchandise constituting this deposit. I received them closed up, and, in my opinion, they ought not to be opened, unless in due time, with the formalities required for opening a sealed will. I repeat the assurances of my particular regard, praying God to preserve your life many years.

JOSE MARIA DE URIA NAFARRONDO.

To Don JOSE RODRIGO GARCIA,

Secretary pro tem. of the sovereign government of Chihuahua.

OFFICE OF THE SECRETARY OF THE BUREAU OF THE GOVERNMENT OF
CHIHUAHUA.

His excellency the vice-governor has observed with sorrow the efforts made by you to elude the orders of his excellency, by raising questions which are irrelevant, and to a certain degree ridiculous, availing yourself at the same time of gratuitous allusions, and of sayings which are unbecoming to the serious character of an official note, and still more wanting in that respect with which a foreigner ought to treat the first magistrate of the State which has given him a kind reception. His excellency, however, in order to proceed with the good sense and prudence required by the high position which he occupies, ordered that this department, disregarding those considerations, should answer only the principal points touched upon by you in your note of the 31st ult., and in the next place should convey to you the final determination of the government, which I now proceed to do. Neither is your house that of the *consulate* of Spain in Chihuahua, nor by the mere fact of being such house would it be entitled to the considerations of which you pretend to make a display. The first point is a truth of fact, and a truth which you must bear in mind, because you cannot forget that your letters-patent designate you only as vice-consul, and not as consul of her Catholic Majesty. The second point is a truth of law, because your house is not entitled to any immunity, (as even consuls are not entitled to any;) and as you are a *merchant*, you are only entitled to be treated like any other Spanish citizen engaged in that business, as is expressly provided by a *Spanish law*, which, we suppose, is well known to you. You have compromised yourself more than you think, by keeping in your house contraband goods—if those which you say you have on deposit belong to the Spanish citizen, Don Manuel X. Harmony; and the responsibility which you have incurred, (perhaps without knowing it) is so great, that, without the extraordinary powers with which government is invested, (and of which it has made use, out of regard to the fraternity which unites it to the Spanish nation,) the government would perhaps have been compelled to consider you as an accomplice in the crime committed in making contraband, and thus defrauding the treasury of the duties justly appertaining to it. The decree to which you refer in your note to which this is an answer; could not, unfortunately, be published in this city, and could not therefore be binding; but if the governor were bound by the contents of said decree, the consequence would be exactly the contrary to what you suppose. The aforesaid decree was issued by his excellency himself, and it expressly prohibited the circula-

tion and sale of all goods introduced in the caravan of the United States, in which the property of Don Manuel X. Harmony came; such goods were declared to be liable to seizure, although in the hands of a third party as owner. Unless the owners thereof made proof to this government that they had paid upon them the duties required by law, the issuing of permits and passes for them was prohibited. Government reserved to itself only the power of permitting the circulation and sale in the State of certain goods, provided they belong to Mexicans or to neutrals, who are bound to prove payment of the aforesaid duties by a certificate issued by the commissary and legalized by the government. Such were the provisions of the decree; and on that account the mistake which you make is unexpected and surprising, when you assert that said decree guaranties the ownership of Harmony in said goods, and permits the fraudulent importation of them. Did Mr. Harmony or you ask the proper permit of the government of the State? Have you paid for the aforesaid goods the requisite duties? Have you proved the payment of them, by the certificate of the commissary and the endorsement of the government? Have you even had recourse to the favor which was granted to those merchants who should present their effects? No. What pretext even can be alleged in support of the error which you commit, when you assert that Mr. Harmony has introduced his merchandise into the State of Chihuahua under the supreme authority of the same? The government cannot believe, as you think, that the fact of the commander of the North American forces not having answered your communications, in which you stated to him that you had at his disposal the effects delivered to you by Mr. Harmony, proves that said commander did not admit the delivery of such goods. If this silence proves anything, it is rather that he assented; because it is an axiom of law, that "he who is silent does not confess; but, notwithstanding, it is true that he does not deny." But although that silence should be interpreted as you pretend, still it would always follow that the goods in question are liable to seizure in consequence of having been introduced by a person whom you call a Spanish citizen, but whom other trustworthy individuals say is a citizen of the United States, and who, as we all know, has not legalized the introduction of them by the only means allowed by law. This government cannot know or say whether the government of the United States will admit or reject the claims of Mr. Harmony; but it does know, that if his application should prove unfavorable, he can only complain of himself, because the injury which any one experiences through his own fault, he ought to impute to himself, and not to another. I have informed you already that the government does not think your former remarks to be well founded in justice, and cannot therefore take them into consideration. His excellency thinks in the same manner in relation to the new remarks made by you in the note which I am answering. His excellency the vice-governor is willing to believe that it has not been your intention to address to him the unfounded reproaches which are almost necessarily to be drawn from the phrase which you have set down from the 21st to the 23d line of the 3d page of your aforesaid note; but I will inform you, that if it has been really your intention to direct such reproaches to his excellency, he despises them, because the means employed is very base and the functionary very elevated; and you will understand, that if unfortunately you should adopt the

reproachful terms therein contained, the government would repress with a strong hand such a proceeding, because it is its duty to maintain and preserve unimpaired the respect due to its high position. No law imposes on the government of the State the obligation of consulting formally in relation to those points which depend on its decision. The person in charge of the executive power is a lawyer, and is therefore not compelled to have recourse to others for advice. His excellency not deeming, then, the advice which you give him opportune, has already formed his opinion, and dictated his order upon this matter in question. He directs me, therefore, to order you, without a moment's delay, and immediately on receiving this communication, to begin to make the delivery in detail of the goods which Don Manuel Harmony kept in your stores, and placed at the disposal of Colonel A. W. Doniphan, commander-in-chief of the North American forces that invaded this State; such delivery to be made to the prefect of this district, and to the collector of alcabala duties, who will present themselves with this note to receive them, and who will require you to satisfy them fully that the goods which they are to receive are all those which Mr. Harmony delivered to you, for the purpose mentioned above. Finally, I inform you, by order of his excellency, that this department will not receive any other answer to the present note to be transmitted to his excellency, than that which shall only contain the simple information that you have complied with the requirements of this note.

Notwithstanding the aforesaid, I improve this opportunity of renewing the assurances of my particular esteem and consideration. God and liberty! Chihuahua, June 4, 1847.

JOSE RODRIGO GARCIA,
Secretary pro tem.

To Don JOSE MARIA DE URIA NAFARRONDO.

CHIHUAHUA, June 8, 1847.

The doorkeeper of the supreme government delivered to me on the 5th your note dated the 4th instant, and requested, on the same day, that it should be returned. Yesterday, the 7th, Don José Felix Maceyra, prefect of the district, presented himself at this my house, accompanied by his secretary, and by Don Manuel Altamirano and Don Santiago Bustamante, collector and surveyor of the revenue. Immediately thereafter the former placed in my hands the aforesaid note of the 4th, and the note directed to him by your excellency, requiring him to proceed to take the effects deposited in my house by Don Manuel X. Harmony, for the purpose of holding them at the disposal of Col. A. W. Doniphan, commander-in-chief of the North American forces. In order to carry into effect duly the order issued by his excellency the vice-governor of the State, the proceedings commenced in the presence of Don Feliz Zubia, notary public, who, at my request, witnessed the act of delivery, taking account and removal of the effects. This act having been finished at a quarter to 4 o'clock in the afternoon, I took down the frame containing the royal arms of Spain, which was placed over the principal door of my house. I expect that the document relating to this forcible delivery will be delivered to me as soon as possible. On a separate paper I direct to you a protest, in due form, as vice consul of Spain, to serve in all times the rights of

Don Manuel X. Harmony as a Spanish citizen. Although I would be glad to see ended this controversy, to which the business of strangers has given rise, I cannot but explain several points of your aforesaid note, which intimately touch my personal delicacy. Properly speaking, I am vice consul of Spain in Chihuahua, and acknowledged as such by their excellencies the President of the republic and the governor of this State, entitled to all the privileges, honors, and prerogatives appertaining to said office. I duly respect the decree relative to immunities, promulgated by our good King Charles the III, so far as it is not in opposition to the subsequent enactments of the Congresses of Spain and Mexico, who have as much power to legislate at present as his Majesty had in his day; it following, from the practice in Spain, France, England, Mexico, and in all the civilized kingdoms of Europe, America, Asia, and Africa, that consuls and vice consuls place on the door of their houses the arms and flag of their respective nations; many of them keeping, besides the arms, the national flag permanently displayed, as I have seen it in Bordeaux and Bilbao, at the houses of the Mexican consul and vice consul. The houses and persons of these functionaries, appointed in a greater number of cases *ad honorem*, are so much respected, that in modern times the conquest of Algiers, the blockade of Lisbon, the threatened rupture with Morocco, and with Queen Pomare, &c., &c., were all occasioned in consequence of not having respected consuls and vice consuls. Notwithstanding this, for the sole purpose of obeying, not waiving my rights, I have taken down the royal arms of Spain. I am, it is true, a Spanish merchant, and I consider it a great honor, and I greatly appreciate the generous hospitality which I have received from the government and the generality of honorable Mexicans. I do not think that I have in any manner compromised myself as the subject of a neutral power, for receiving in my consular house the effects, arms, papers, chests of money, jewels, tobacco, &c., &c., of the government and citizens of Mexico, nor for having received publicly in said house the property of the Spaniard Harmony. This generous and disinterested act, done during the terrible crisis through which we have just passed, will never be designated in any civilized nation of the earth with the opprobrious epithets of an accomplice in the crime, and defrauder of the public revenue. I have long been accustomed to pay the respect due to all public authorities, and particularly to the highest one of the State, and therefore I think it unnecessary to enter into explanations on this point.

I have the honor to present you my respects, praying God to preserve your life many years.

JOSE MARIA DE URIA NAFARRONDO.

Don JOSE RODRIGO GARCIA,

Secretary pro tem. of the government of the State of Chihuahua.

VICE CONSULATE OF SPAIN IN CHIHUAHUA,

Chihuahua, June 8, 1847.

In consequence of no attention having been paid to the exposition which I made to you in my private communication of the 31st of May last, relative to Don Manuel X. Harmony, whom I shall consider a Spanish citizen until the contrary be proved by proper documents; and in order to provide for the case that the merchandise which was forcibly removed from my consular house by a superior order, which I neither could nor

ought to resist, by the prefect of the district, the collector *pro tem.*, and surveyor of the revenues of the State, may hereafter be declared to belong to the aforesaid Harmony. I make formal protest, (with due respect,) and hold responsible those who have directed the act, in order to protect the rights of the aforesaid Harmony.

I repeat the assurances of my respect and consideration, praying God to preserve your life many years.

JOSE MARIA DE URIA NAFARRONDO.

To Don JOSE RODRIGO GARCIA,

Secretary pro tem. of the government of the State of Chihuahua.

The aforesaid copies correspond faithfully and literally with the original contents of the written proceedings presented to me by the party interested, and which I returned to him; and at his request I issue this certificate on these eleven full pages of paper, 4th common seal, and corrected; which I certify.

CHIHUAHUA, June 12, 1847.

[J. F. Z]

JOSE FELIX ZUBIA,

Notary Public.

We, the licentiate Juan Nepomuceno Barcnas, law judge of the district, and Jesus Rivas, first alcalde in turn of the honorable the corporation of this capital, do certify that the mark and signature at the foot of the foregoing document, and by which it is certified, are those of Don José Felix Zubieta, who is a notary public, and on that account full faith and credit have been and are given to all his certificates and acts in and out of court. In testimony whereof, we issue these presents at Chihuahua, September 30th, 1847.

JUAN N. BARCENAS, *Licentiate.*

JESUS RIVARS,

JUAN ARMENDEZ,

AMBROSIO DOMINGUES.

Fees \$2 00.

The underwriters, citizens of the United States of America residing in the city, certify that the signatures of Don José F. Zubia, notary, Don Juan N. Barcnas, judge, and Don Jesus Rivas, mayor, are the same they use in the public writings.

CHIHUAHUA, November 16, 1847.

DAVID DOUGLASS,

EDWARD J. GLASGOW,

W. MAGOFFIN.

Deposition of Capt. John W. Reid.

WASHINGTON, D. C.,

January 4, 1848.

I was a captain in the 1st regiment Missouri volunteers, and recollect that, upon the route to Chihuahua, just below El Paso, I was ordered to report to Lieut. Col. Mitchell, with a detachment of men, for the purpose of bringing up, by force if necessary, Mr. Manuel Harmony and several

other traders who had remained behind upon our leaving El Paso. Col. Mitchell proceeded to execute his commission, and found Harmony and the others encamped, and expressing themselves disposed and desirous of remaining where they were, and fearful that it would not be safe to proceed. In compliance with his orders, Col. Mitchell ordered them up with the column, and Harmony, against his will, was compelled to go. The object of the order was to prevent the wagons and merchandise from falling into the hands of the Mexicans, and for the additional purpose of having the loaded wagons to use, if necessary, as a kind of field-work. After arriving at Chihuahua, I learned that Harmony entered a formal protest against the procedure, and that before we left he turned over his goods subject to the order of Col. Doniphan, and left Chihuahua with the army. I do not believe that it would have been safe for him to have remained—as I know, from what I heard among the people, that they were embittered against him. I saw a copy, also, found among some papers after our arrival, of an order by which Harmony and Samuel Owens were mentioned by name, and excluded from all right to quarter, on account of their aid rendered to the army in furnishing it with supplies at El Paso and other places. They seemed to mark Harmony for peculiar vengeance, because he was a Spaniard, and (in their eyes) a sort of traitor. The good feeling of Harmony for our success I cannot doubt, as, from his knowledge of the language, and his command of means, (of which the army was destitute,) he was enabled to be of the most essential assistance in procuring supplies—an assistance which he seemed always most cheerfully to render.

JOHN W. REID,

Late Capt. Missouri Mounted Volunteers.

Sworn to and subscribed before me, this 5th day of January, 1849.

SAMUEL GRUBB, J. P. [L. s.]

Certificate of Lieutenant Dorn.

WASHINGTON, D. C., January 6, 1849.

I certify, on honor, that on or about the 10th day of February, 1847, Manuel X. Harmony, a trader from the United States, was encamped a short distance south of El Paso del Norte, when Col. A. W. Doniphan, with his command, passed his encampment, leaving Mr. H. to the rear; and after passing him, the next day, he ordered Col. D. D. Mitchell to return with a detachment, and bring up Mr. H., which was contrary to Mr. Harmony's desire; he being under the impression that our force was too small to protect the great amount of property that was under our charge, from the overwhelming force the Mexicans could bring against us. He, being obliged to submit to Col. Doniphan's orders, proceeded with us; the men of the traders being formed into companies, to swell our command, and their loaded wagons were to be used as a field fortification. I am also knowing to the fact that the Mexicans had marked him as one of their victims, and consequently he was obliged to either abandon his property, or sacrifice his life to the Mexicans. He chose the former, and left with us about the 25th day of April, 1847. It further affords me great pleasure to say, that Mr. Harmony was of very great service to us in procuring forage for our animals, and provisions for our men; at the same time.

he was ever ready to interpret for any officer who might wish him to do so, without any compensation.

ANDREW J. DORN,

Late Sen. 1st Lieut. Co. A, Missouri Light Artillery.

SUPPLEMENTARY PETITION.

To the honorable Senate and House of Representatives :

Your petitioner, in connexion with these papers and the documents embraced in the report made upon his petition at the last session of Congress, (House Report No. 458,) would most respectfully submit to your honorable bodies, that the state of facts which is set forth and proved fully establishes the justice and equity of the reclamation for which he has petitioned, and his title to indemnification, under that clause of the constitution which provides that private property shall not be taken for public use, without a just compensation being rendered therefor.

The fact of the seizure for which this reclamation is made, it is respectfully submitted to your honorable bodies, is not controverted; nor is it controverted that the object of the seizure was for the aid and benefit of the military operations of the United States. These facts are fully shown in the orders themselves relating to the seizure, given by Col. Doniphan, who directed the seizure to be made, and by Lieutenant-Colonel Mitchell, who executed the command, and took possession of the property; and both the seizure, and its object and motive, are fully and freely admitted by those officers, in their letters and certificates, which, in the report of last session, and in the papers now presented, are before your honorable bodies. The uses which were actually made, both in the operations against the enemy, and for the purpose of defence, of the property thus seized, are also shown in the report of Col. Doniphan of his military operations, made to the Adjutant General, as also in the certificate of Capt. Weightman, and other documents embraced in the report of last session. (H. R. 458.)

From this seizure of his property it is now fully proved, as your petitioner would further most respectfully submit, resulted, as a direct and necessary consequence, and without any negligence or fault on his part, the entire loss of his said property. If there could previously have been a doubt on this point, or a supposition that he might still recover the property, or a portion of it, such doubt must be removed by the authentic record now obtained and presented, of the forcible seizure and confiscation of the goods, as property of the United States, by the government of the State of Chihuahua very soon after its evacuation by the American army. By these proceedings it will be seen, that, in opposition to every effort that could be made by the functionary in whose charge the goods were left, the authorities of the State of Chihuahua persisted in regarding the merchandise in question as property of the United States; and for the purpose of taking possession of it, as such, proceeded even to the forcible entry of the house of the Spanish consul, in a manner to cause that functionary to consider his consular privileges violated, and to take down from his doorway the Spanish arms, which designated the official character of the place. It will

be seen, therefore, that no endeavor was wanting, on the part either of the petitioner or of the agent in whose charge the merchandise was necessarily left in Chihuahua, to prevent the sacrifice of the property, even after its seizure by the order of Col. Doniphan had taken it out of the petitioner's control, and, consequently, released him from the responsibility of its custody.

It is true that the petitioner, subsequent to the arrival of the army in Chihuahua, consented to retake into his temporary possession the merchandise which had been seized from him. This was at the solicitation of the commander, and for the purpose of endeavoring to dispose of the merchandise by sale, and thus reduce the losses consequent upon the seizure. It was not possible for your petitioner to effect this purpose; but he trusts that the sincere desire which he thus showed to avoid the necessity of asking reclamations from the government will not be allowed to prejudice his just claim.

It is shown by the evidence, as your petitioner would further respectfully submit, that had he been permitted to proceed direct to Chihuahua from Santa Fé, as was his desire, or even been allowed to continue thither after receiving permission to depart, he would have been enabled to enter his merchandise in that market at the customary duties, and to sell it at a large profit; that other traders went in freely with their merchandise, and disposed of it to advantage, under the permission of the government of the State. (See certificates U, V, X, and Z, pages 42, 43, report of last session, H. R. No. 458, and article IV of the decree of the Chihuahuan government, p. 39.)

It is also shown, as your petitioner would further respectfully submit, that the only prohibition of the State of Chihuahua to the introduction, sale, and circulation of goods, was upon those imported *with* the American invading forces; that all other traders, even those arriving but a very short time before, were allowed full liberty both to trade in Chihuahua, and to carry their merchandise thence to other markets. This is authentically shown by the decree of the Chihuahuan government, (pp. of the Rep. 38, 39, 40,) and exemplified in the facts stated in the paper, (marked Z, p. 43,) certifying to the fact, that traders who proceeded to Chihuahua in opposition to the order of Col. Doniphan, and only arrived *in advance*, instead of *with* the invading army, were permitted freely to sell and circulate their merchandise.

It is beyond question, therefore, your petitioner most respectfully submits, that his compliance with the order of Col. Doniphan, and the subsequent seizure of his goods and enlistment of his teamsters, and compulsory carrying of his merchandise into Chihuahua with the train of the army, were the sole cause of his experiencing the losses which he has sustained; that otherwise he would easily have made his return to Santa Fé, as he desired to do when informed of the intention to attach his wagons and merchandise to the train of the army; or had he been allowed to proceed, he might freely have sold his merchandise, with a choice of market either in Chihuahua or the neighboring departments, and realized those large profits which alone could repay, or induce, the long, toilsome, and hazardous voyages attending commercial enterprises into that country.

Should it be inquired why the merchandise could not be disposed of during the time the United States forces occupied Chihuahua, your honorable bodies will readily perceive that the decree of the Chihuahuan gov-

ernment, making all goods imported at the same time with the entrance of the invading army liable to seizure and confiscation in the hands of third parties, and wherever found, would effectually prevent any traffic. The occupation or police of the American troops extended scarcely farther than the gates of the town; and consequently there could be no purchasers for goods which would be liable to forfeiture the moment they were taken beyond the lines of the American sentries.

If the goods could not, for the reasons stated, be sold during the continuance of the American army in Chihuahua, still less could your petitioner have remained to protect them, or offer them for sale, after the place was evacuated by our troops. Such were the feelings, as is well known, of the inhabitants towards the Americans, that, in all probability, no one who entered the place at the same time with the invading army would have been spared by the popular fury. This feeling of hostility was especially bitter toward your petitioner, whose active aid in procuring supplies for the American troops, and advancing money for their necessities during the march, had become known at El Paso del Norte, and thence had been communicated into Chihuahua, and caused your petitioner to be singled out, by name, as a special object of vengeance. (See the deposition of Captain Reid, page 10.)

When, therefore, the place was evacuated by Colonel Doniphan, without any stipulation either for the safety of the person of your petitioner, or for the exemption of the goods from the operation of the decree of confiscation, which was known to Colonel Doniphan to be in force, your petitioner, it is respectfully submitted, had no other resource than to abandon the possession of the goods, leaving them in the safest place that was available, and subject to the order of Colonel Doniphan; out of whose direct charge he had only temporarily taken them, as already explained, for the purpose of endeavoring to sell them, and so to reduce the damage and losses resulting from the seizure. In thus quitting the possession of the merchandise, your petitioner was careful to apprise Colonel Doniphan; and if that officer, with the strength and authority which he possessed, did not find any means to secure the safety of the property which he had seized, and, against the remonstrance and protest of the owner, brought into that difficulty, it must be admitted that your petitioner could not have had resources to that end. Colonel Doniphan, it is true, suggested to your petitioner that he would be at liberty to remove the goods from the place at the same time that the army should evacuate, and to proceed with it to Saltillo. But this, also, it will be perceived, was impossible, from the lack of animals to draw the wagons; his own mules having been lost or broken down in the forced work to which they had been put after their seizure for the use of the army, and it being impossible to procure others. These facts are fully set forth, and the proof given in the letters of the petitioner to Colonel Doniphan, (report No 458, pp. 17 and 19;) in the papers marked I and J, (pp. 33 and 34;) and in the deposition of Messroy, (p. 43.)

Your petitioner had therefore, it is respectfully submitted, no alternative: he could not take away the goods, for the reasons stated and proved; he could not sell them; he could not remain with them to protect them, and he could not have protected them if he had remained. All this was a direct, and, as far as your petitioner was concerned, an inevitable consequence of the original seizure of the merchandise, and its compulsory con-

version into appliances of war, and conveyance as such into Chihuahua, with the train of the army; such a consequence as, according to principles which have been directly adjudicated by the highest judicial tribunal, must be held chargeable to the cause which produced it. In the case of the *United States vs. Hale*, reported in the 6th volume of Cranch's Reports, p. 176, the court decided the case upon the principle that "an effect which proceeds inevitably and of absolute necessity from a specified cause, must be ascribed to that cause," and consequently that cause be held chargeable with it.

It is readily admitted that the government of the United States, had it found it expedient to do so, might lawfully and properly have *forbidden* the commerce in which your petitioner was engaged, and blockaded the inland ports as well as the seacoast of Mexico; and that had such prohibition or blockade been instituted, and, in violation of it, the merchandise of your petitioner been found in the country of the enemy, it might properly have been seized for that cause, and by due process of law libeled and confiscated. It is still further admitted, that by the mere operation of the laws of war, commerce with the public enemy is forbidden, and can only lawfully be carried on by permission, either express or implied; and that had the voyage of your petitioner been commenced after the war broke out, and without either the express or implied sanction of the government, and so in violation of the laws of war, that also might have been good ground for the arrest of his expedition, and probably the forfeiture, in course of law, of his merchandise. But, it is respectfully submitted, the facts in this case show that the property of the petitioner was not seized upon any pretence that the trade for which it was intended was wrongful or illegal; on the contrary, the facts show that the expedition of your petitioner was not in violation of any prohibition or blockade; that it was undertaken before the war commenced, and in direct pursuance of a law of the United States enacted for the encouragement of that particular trade; that after being informed of the existence of the war, your petitioner complied faithfully with every direction given for his government by the military commander; that none of those orders were in any respect prohibitive or in condemnation of the trade, but their effect was to recognise and sanction it; that it was directly permitted, by the levying of duties on the merchandise, by order of the American commander at Santa Fe, and for the benefit of the United States; and, finally, that after the breaking out of the war, repeated acts of the executive officers of the government gave direct sanction and permission to the trade, even to expeditions to be subsequently fitted out, by the mercantile house of which your petitioner is a member, and by others.

But it is not pretended that the seizure was upon any ground of illegality or wrongfulness in the trade. Col. Mitchell, who was the officer intrusted with making the seizure, declares emphatically in his certificate (page—, Report H. R. No. 458) what were the grounds and motives of the seizure, and shows that its whole object was the public service.

Col. Doniphan, in his letter herewith presented, confirms Col. Mitchell, and likewise says: "he wished the traders good success, and admired their enterprise."

The letter of McClintock Young, esq., then acting Secretary of the Treasury, shows that the expedition of your petitioner was commenced before the fact of the war became known; and also, that even the breaking out of the war did not cause the government to withdraw its sanction and en-

couragement from the branch of commerce in which your petitioner was embarked, but that permission continued to be given for its prosecution.

It is clearly shown, then, your petitioner would most respectfully submit, that the pursuit in which your petitioner was engaged was in every respect lawful, and such as was directly permitted to him, and as had the recognition and sanction of the government; and that it was in the prosecution of this lawful and rightful pursuit that he was interrupted by the United States forces, and, finally, for the public service and benefit, his goods seized out of his control, the persons in his employ compulsorily enlisted into the invading army, and his mules and wagons, and the contents of the latter, converted into a portion of the military invading force, used as appliances of war, and carried—against his remonstrance, and in opposition to his desire to return to Santa Fé, where the American army was in full possession, and where his property would have been entirely safe—with the invading force into the city of Chihuahua: whereby has resulted, without any fault on his part, the breaking up of his expedition, and the entire loss of his merchandise and outfit.

It is not intended to intimate that the measures which have thus resulted were not necessary and proper on the part of the commander. He was undoubtedly right, as his own words express his purpose, in “making everything else at most as secondary to the safety of his army and the success of his expedition.” But it cannot render the title of the petitioner to indemnity less just and right, that it was for these high purposes of public consideration and advantage, that his property was made the sacrifice.

If a case were supposed of a cargo of goods imported into one of the seaports of Mexico, under the tariff of duties established by our government, in the ports of which our army and navy had possession; and after its entrance and payment of duties, according to the regulations prescribed by our government, it had been arrested on its way to market in the interior, and seized out of the possession of the owner, by the commander of a division of the American army, for the aid of his military operations, and the entire loss of the goods had thence resulted to the owner: of a like character to this, it is respectfully submitted, is the case of your petitioner, and of at least equal merit. The trade in which your petitioner was engaged was equally under the sanction of the government, and consequently equally lawful with that which was carried on through the Mexican seaports after the raising of the blockade, and the establishment in them of a tariff of duties by our government. In either case, it would seem to be clear, that, after a party had complied with the rules which the government had prescribed as the conditions of the trade, his pursuit would be equally lawful, and equally under the protection of law, with any other in which he could be engaged.

As for the suggestion made in the letter of the honorable Secretary of War, that a part of the inventory of your petitioner was “contraband of war,” it is respectfully submitted that the evidence shows that the cargo was made up and fitted out before your petitioner had any knowledge of the existence of the war; that the articles spoken of, consisting of a single keg of powder and ten rifles, were but a moderate defensive equipment for a caravan crossing the great prairies, against depredations from the numerous Indian tribes who infest the way. Moreover, it is respectfully submitted, the imposition and collection of duties on his merchan-

dise, as was done by order of the American commander at Santa Fe, without any objection being made to the character of the goods, must be taken as a legalization (if any were needed) of the whole. Again, it is respectfully submitted, there is a process of law, to the benefit of which he would be entitled, before his goods could be confiscated on that ground. But it is not pretended that the seizure of the goods, or any delay or hindrance to which your petitioner was subjected, was for any such cause. Finally, your petitioner would most respectfully appeal to the uniform testimony of the officers of the expedition in regard to the many friendly and serviceable acts which he was enabled to perform in behalf of the American troops and the interest of our government, to rebut any suggestion or presumption that he could have intended or desired to strengthen or benefit the enemy.

In consideration of all which, your petitioner would most respectfully pray that your honorable bodies will be pleased speedily to pass such a bill for his relief, as will indemnify the heavy losses he has sustained, as already set forth, by the seizure of his property for the public service, and the compulsory conveyance of his merchandise, as a part of the appliances of the invading force, into a place where, under the circumstances, it was not possible for him to prevent the whole from falling into the power of the enemy.

And your petitioner will ever pray.

M. X. HARMONY.

